

Alternative Plan
July 21, 1997
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THE ALTERNATIVE PLAN

The Main Points:

1. Statutory exclusion from CIWMB authority is dependant upon interpretation of the term "Separated for Reuse". For the purposes of the Alternative Plan:

"Separated for Reuse means materials that have been separated from Source Separated Material or from mixed solid waste for the purpose of recycling or Reuse."

2. Source Separated as defined by CIWMB policy means:

"Source separated recyclables are materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream by their owner, at the point of generation, for the purpose of recycling or Reuse."

3. All Source Separated and mixed waste processing activities produce residuals. The residuals produced at SSM processing facilities range from 2% to approx. 20% by weight measured against the weight of the incoming materials.

4. The level of public health concern regarding waste, is proportional to the amount and type of waste present at any specific location. Placement of any specific site in the tier structure is dependant exclusively upon public health concerns as reflected and measured in incoming waste tonnage.

5. All SSM, MRF or Transfer Station or combination of any or all are simply variations of the basic transfer station model. That is, discards arrive at the facility, are processed in some manner and are transferred off-site, either to a disposal site as waste or to a site to be reused or recycled into a new material.

6. All source separated material is considered to contain 10% residuals. An example; A SSM facility that receives 900 TPD would be placed in the same tier as a facility that receives 90 TPD of mixed solid waste. The SSM facility is considered to roughly exhibit only 10% of the public health concern as a site that processes or handles mixed solid waste.

7. There is only one set of Minimum Standards that apply to all Transfer Station/Processing Sites, regardless of the tier.

8. Regulatory exclusions are based on the probability of receipt of materials, of public health concern in significant amounts, at the facility. Facilities that would be excluded would be those that process inert materials only (e.g. Auto Shredders, Glass Recyclers, etc.); processing operations that have direct control over the collection of the material (Buy-Backs, etc.); those

that accumulate material in insignificant amounts (Drop-Offs...less than 40 tons per day).

9. Tier Placement:

The placement of the various tiers might look like this:

Facility	Tier	TPD(Trash)	TPD(SSM)
Non-SW	Excluded	Less than 4	Less than 40
Small	Notification(Non-Permitted)	4-25	40 to 250
Medium	Registration(Permitted)	>25 to 100	>250 to 1000
Large	Full Permitted(Permitted)	100+	1000+

Alternative Plan Details:

Detailed explanations for each point of the Alternative Plan:

1. Statutory exclusion from CIWMB authority is dependant upon interpretation of the term "Separated for Reuse". For the purposes of the Alternative Plan:

"Separated for Reuse means materials that have been separated from Source Separated Material or from mixed solid waste for the purpose of recycling or Reuse."

See EndNote #1 for the derivation of this definition.

I believe that this places the definition where it belongs, at the end of processing, not at the beginning. If a definition similar to the one proposed in the regulations emerges as law, then it would seem appropriate to place **ALL** source separated processing operations outside the purview of CIWMB authority. This is because Source Separated Materials do not require any special "test", such as the presence of a 10% residual content, to verify their validity. As was mentioned numerous times by Board staff at P&E Committee meetings, the difference between a facility that processes SSM and mixed waste at a MRF is clearly evident.

See EndNote #2 for more regarding this subject.

2. Source Separated as defined by CIWMB policy means:

"Source separated recyclables are materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream by their owner, at the point of generation, for the purpose of recycling or Reuse."

This was made Board policy in 1995. For Purposes of the Alternative Plan it should be formalized in the regulations. See EndNote #1.

3. All Source Separated and mixed waste processing activities produce residuals. The residuals produced at SSM processing facilities range from approximately 2% to 20% by weight compared to the weight of the incoming materials.

These numbers were derived from a Board staff survey of SSM processing facilities conducted in the summer of 1995.

4. The level of public health concern regarding waste, is proportional to the amount and type of waste present at any specific location. Placement of any specific site in the tier structure is dependant exclusively upon public health concerns as reflected and measured in incoming waste tonnage.

The level of solid waste regulation has traditionally been based upon the amounts of waste that either arrive at operations and facilities at a specified rate or are present in specified amounts for a specific time period, such as a month or year. The frequency of inspectional oversight, degree of plan detail an operator must submit to a regulatory agency before implementation, and the degree of prior approval regarding the Small, Limited and Large Volume Transfer Stations, Composting operations and facilities, Contaminated Soil operations and facilities and Waste Tire Operations and Facilities are dependant upon the amount of waste at the facility.

Board staff had indicated on August 16, 1995, that they were in receipt of a letter from the California Conference of the Directors of Environmental Health (CCDEH), that essentially indicated that there were no health problems at SSM facilities and if there were, CCDEH believed that there were local ordinances that could address the problems.(See EndNote #3). This essentially ended consideration by the Board of any health related criteria that might be applied in the placement of activities in the tiered structure.

However, a review of the contents of that letter (See EndNote #4) reveals that Board staff exaggerated the lack of concern attributed to CCDEH. The details of the proposed Alternative Plan closely follow the major points stated in the CCDEH letter, if at a somewhat lower level of regulatory oversight. Quoting from Item #6 of the letter, "...The type of permit should be established by the LEA, based on factors related to the public health, safety, or environmental problems caused by the particular facility."

5. All SSM, MRF or Transfer Station or combination of any or all are simply variations of the basic transfer station model. That is, discards arrive at the facility, are processed in some manner and are transferred off-site, either to a disposal site as waste or to a site to be reused or recycled into a new material.

Before AB 939 it was easy to distinguish between a SSM processor and what the proposed regulations identify as a Transfer Only facility. Today, that is not possible. Almost all transfer stations carry out resource recovery at varying levels of intensity. All SSMPs, MRFs and TSs remove materials from either the waste stream or the recyclable material stream for varying

reasons. The material may be valuable and will be recycled or the material may be a hazardous and should be placed in a special storage area until it is properly disposed or utilized. Some MRFs carry out SSMP and some SSMPs carry out MRFing. SSMP simply means less waste to be disposed. As the pressure to recycle more and more items, the remaining distinctions between a MRF, TS, SSMP will continue to fade, that is, if not constricted by the prescriptive and pigeoned-holed tiers that are proposed. The Alternative Plan would allow the operator of any site to respond quickly to the numerous changes to an existing operational plan that might be driven by fluctuations in the markets, waste streams, etc.

6. All source separated material is considered to contain 10% residuals. An example; A SSM facility that receives 900 TPD would be placed in the same tier as a facility that receives 90 TPD of mixed solid waste. The SSM facility is considered to roughly exhibit only 10% of public health concern as a site that processes or handles mixed solid waste.

In 1995 Board staff conducted a survey of 41 SSM sites throughout the state. The number of facilities noted in each residual percentage range was:

0-2%.....	4
2-6.....	9
6-12.....	22
12+.....	6

If one attempted to make a graph using just this data and determine a median, it would probably result in a number closer to 8% than 10%. Whatever the reasons, (See EndNote #1) the Board chose 10% as representative of a SSM processing activity. This of course means that a facility reporting 11% would be "In" and a 9% facility would be "Out". As 10% lies close to the center of the observed universe of SSM facilities it is difficult to see a substantive difference between the 9% operation and the 11%. In fact I can't and for all practical purposes, will never be able to do so. One of the impediments here is that the facility's residual output will vary above and below any median number. This wouldn't be a problem if the demarcation line was established at a natural break in the data. That isn't the case here. The top of the bell curve is the point where the "bright line" is drawn. Assigning the line at 25% would make infinitely more sense if the intent was to distinguish between source-separated and MRF processing activities.

The Alternative Plan assumes that all Source Separated Materials that enter the facility for processing contain 10% residuals and thus roughly are 10% of concern, than a MRF that might receive mixed solid waste which might contain from 70 to 90% residuals. The operator of a MRF might complain that perhaps the MRF could be considered only 80% of a transfer only facility. My response is two-fold. The MRF and TS handles a much higher proportion of putrescible material than the SSMP. This might make up somewhat for the relative imbalance. However, the major reason, is to place activities within a regulatory framework commensurate with the same magnitude of concern, not the exact level of concern.

Using the graph developed by Board staff in 1995, the 10% residual is very close to the median. Therefore, in order to avoid the endless arguments as to exactly "What do we count?; How much is countable?; When do we count?; What records do we refer to when counting?", an assumption is made that ALL SSMP receive materials that contain 10% residuals. There are only two facts that have to be ascertained; the first is "Is the material source separated? And what is the daily input tonnage of that material?". The first does not require any extensive investigation. As was made very clear to the Board by Board staff at the October 18, 1995 P&E Committee meeting, ... one could distinguish between SSMP and MRFs by just looking. The difference was obvious. If the LEA had routine access to a SSMP site, the records would be available and the source of the material could be determined relatively easily. The input tonnage would also be relatively easy to determine.

During the various Board and P&E Committee meetings during the middle part of 1995, it was stressed that a major concern of the LEAs was the presence of putrescible material arriving at SSM processors. Putrescibles are a major concern but they aren't the only ones of public health significance.. Everything that is discarded, and in certain concentrations and circumstances, can negatively affect us. Other unwanted materials that might accompany proto-recyclable items are:

1. Hazardous Materials as defined in the HS code
2. Medical Waste as defined in the HS code
3. Hazards in waste stream such as sharps,
4. Materials if stored improperly that could provide a rodent harborage and/or a vermin breeding environment. (Mosquitoes, flies)

The assumption that just because a material is Source Separated makes it benign, from a public health view, is NOT true. All source separated means is that the generator decided it might have some value and placed it in a bin that was not destined, directly, for disposal. The material could be 100% putrescible, source separated, destined ultimately for a hog ranch as hog feed.

7. There is only one set of Minimum Standards that apply to all Transfer Station/Processing Sites, regardless of the tier.

As mentioned above, Transfer Stations, MRFs and SSMPs, if left to their own devices and not constrained by arbitrary and artificial barriers, will become less distinct from one another. Currently MRFs and SSMPs employ the same types of devices and methods to sort the material.

A common set of Minimum Standards should be developed that address distinct functions that would apply to the entire scope of the "Transfer Station/MRF/SSM" hierarchy of tiered activities.

8. Regulatory exclusions are based on the probability of receipt of materials, of public health concern in significant amounts, at the facility. Facilities that would be excluded

would be those that process inert materials only (e.g. Auto Shredders, Glass Recyclers, etc.); processing operations that have direct control over the collection of the material (Buy-Backs, etc.); those that accumulate material in insignificant amounts (Drop-Offs...less than 40 tons per day).

As with the Inclusion criteria, the Exclusion criteria is also based on Public Health Concerns. An outline of the Selection criteria is:

SELECTION CRITERIA AND EXCLUSIONS

Perhaps an exclusion criteria could be based upon two things: (Alternative 2 part test)
The criteria would be applied in this order:

- I. The probability of receiving waste that would contain constituents of a public health concern and
- II. The absolute quantity of trash entering an operation or facility during a specified time period.

Definition of "Constituents of a public health concern":

1. Putrescibles
2. Hazardous Waste as defined in the HS code
3. Medical Waste as defined in the HS code
4. "Safety waste" (sharps,)
5. Materials if stored improperly that could provide a rodent harborage and/or a vermin breeding environment. (Mosquitoes, flies)

Examples of I:

1. Processors that handle only inert materials:
 - Metals:
 - Auto Dismantlers and Salvagers
 - Auto Shredders
 - Wire Choppers
 - Metal recyclers
 - 2. Glass:
 - Recyclers
 - Processors
 - 3. Demanufactures of Inert Materials
 - Circuit Boards
 - White Goods
 - 4. Asphalt and Concrete Crushing

2. Processors or Recyclers who handle organic material

(The probability that these types of processors would receive any material of a Public Health Concern is very low because the material is either under their direct control from the time it was received from the user or they paid for the material...In either case, the processor will not accept material they cannot utilize.)

- a. Paper Recyclers and Processors
- b. Mattress , Furniture Recyclers
- c. Buy-Backs

Examples of II:

- 1. Buy-Backs (Utilizes the Exclusion criteria in 2 above or does not meet the minimum 4 Ton per day waste [40 ton a day SSM].
- 2. Drop Offs

9. Tier Placement:

The placement of the various tiers might look like this:

Facility	Tier	TPD(Trash)	TPD(SSM)
Non-SW	Excluded	Less than 4	Less than 40
Small	Notification(Non-Permitted)	4-25	40 to 250
Medium	Registration(Permitted)	>25 to 100	>250 to 1000
Large	Full Permitted(Permitted)	100+	1000+

All MRFs, SSMPs and TSs are considered the same for tiering purposes. There is a cap of 4 Tons a day...but this refers only to waste. If an operation received only SSM then the cap rises to 40 Tons a Day. Only the very largest SSM processor would be required to obtain a Full Solid Waste Facility Permit. The criteria of trash input as the principle factor would allow, for example, a Medium Tier to MRF 75 tons of trash a day and to process 250 tons of SSM and still remain in the Registration Tier. Or the operator could just operate as a Transfer Station and move up to 100 TPD of waste without leaving the tier. All the various activities such as sorting, tipping floor resource recovery, storage, cleaning, etc. would be governed by the Minimum Standards.

The Tier categories are based on Daily Tonnage Input of waste. The lower limit of 4 Tons is derived from the lower limit of small volume transfer stations. Four tons is chosen because 15 cubic yards at 500 lbs. per cubic yard translates to approximately four tons. 500 pounds was chosen because it is a compromise between low density loosely packed material and a high density compacted material. Whatever conversion rate is chosen, it should be formalized in regulations and utilized throughout the state. The lower limit is necessary because there are many varied activities that would qualify for tier placement, but due to the small quantities of waste,

their general public health concern, in most cases, is insignificant.

The Notification Tier reflects the tonnage parameters of the current Small Volume Transfer Station. In 1996, the Board adopted Limited volume TS regulations that range from 0 to 60 cubic yards per day. It was suggested at the time that the upper limit be raised to 100 cubic yards a day in order to accommodate all the small volume transfer stations in existence then. The Board staff response was that they would have to go through the CEQA process again, and that time was of the essence to slot certain facilities in the Limited volume tier. It was suggested that the upper limit could be raised at a later time. It would be appropriate to raise the limit to 100 cubic yards or 25 tons per day in order to treat all small volume TS the same. In Los Angeles County there are no TSs that receive between 20 and 160 tons per day. Therefore any category line drawn in this area would not impact existing facilities and assure that a similar if not exact level of regulatory oversight would be applied to existing same-category facilities.

The Registration Tier lower limit is naturally the upper limit of the Notification Tier. Some industry representatives have suggested, over the past few years, that 100 TPD would be appropriate for this tier. Although there are no existing facilities in Los Angeles County that would fit into this category, apparently there are many in the State. According to anecdotal evidence, many large non-permitted SSM would fit into this category (it would allow up to 1000 tons per day of SSM).

Like the proposed regulations, there is no Standardized Tier. Transfer stations/MRFs/Recycling(SSM) activities are anything but Standard and doesn't lend itself to the numerous activities that could be conducted at a large facility and might require custom and unique conditions within the SWFP.

Any activity with over 100 tons per day of waste would be a cause of concern and would need prior regulatory approval for the design and operation of the facility.

Miscellaneous:

1. Why did CCDEH approve the Board proposed tiering method in October of 1995?

It was shown above that Board staff overstated CCDEH's position in August of 1995. In October of that year, the P&E Committee met to consider adopting Board policy regarding the slotting of the SW activities that are the subject of the proposed regulations. At least one LEA gave testimony and Justin Malan spoke on behalf of CCDEH. The highlights, summary of comments by the a few of the speakers, Board staff and Board members and a verbatim excerpt centering on Justin Malan are presented in **EndNote #5**.

2. The tiering concept is based, at the least, on two main considerations:
 - a. The degree of concern before implementation of a project and;
 - b. The degree of oversight after implementation

The first (a) is simply, "How much do we need to know about a project and when?" and the second is "To what degree do we regulate and how often?". The current Tier. Registration, is not very different from Notification. The current proposed regulations and the Alternative Plan encompass complex activities that require a higher degree of pre-implementation approval. We suggest that the Registration Tier require an LEA approved "Plan of Operation", similar to that required for the Small Volume Transfer Stations. This would not be an RFI but a basic plan that would ensure, at the least, that the operator was not going to attempt to open up a 5,000 TPD Transfer Station in his back yard.

ENDNOTES:

1. SEPARATED FOR REUSE vs. SOURCE SEPARATED

The search for the "Bright Line" originates in Public Resource Section (PRC) 40200(b)(2):

40200. (a) "Transfer or processing station" or "station" includes those facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation.

(b) "transfer or processing station" or "station" does not include any of the following:

(1) A facility, whose principal function is to receive, store, separate, convert, or otherwise process in accordance with state minimum standards, manure.

(2) A facility, whose principal function is to receive, store, convert, or otherwise process wastes which have already been separated for reuse and are not intended for disposal.

(3) The operations premises of a duly licensed solid waste handling operator who receives, stores, transfers, or otherwise processes wastes as an activity incidental to the conduct of a refuse collection and disposal business in accordance with regulations adopted pursuant to Section 43309.

The operative words here are "separated for reuse". There is no definition for this phrase in the PRC or the California Code of Regulations (CCR). The phrase "Source Separated", is not used in the PRC or the CCR. Obviously it has not been defined in either Code. Source Separated, as commonly used in the waste and recycling industry, means (I won't try to be precise but just convey the general idea) that when the owner of a material discards it, the owner desires that further use be made of that material, and initiates that desire or wish or intent by placing the material in a container or location or combination of both that is expressly designed to accommodate that material. This might be curbside recycling for homeowners, the recycling of cardboard containers at supermarkets, etc. The owner separated the material from the general

waste stream at the point (or source) of origin of the material.

The CIWMB adopted as policy, definitions for both phrases on October 24, 1995. These definitions are:

"Source Separated"

Source separated recyclables are materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream by their owner, at the point of generation, for the purpose of recycling or reuse.

"Separated for Reuse"

Recyclables separated for reuse are materials, including commingled recyclables, that have been separated or kept separate from the solid waste stream by their owner for the purpose of recycling or reuse.

The Board staff indicated that Source Separated is a subset of Separated for Reuse, i.e. Separated for Reuse can occur anyplace, not just at the point of origin as in Source Separated.

Then in the proposed regulations another definition of "Separated for Reuse" appears:

(30) "Separated for Reuse" means materials, including commingled recyclables (which have been commingled for transport purposes), that have been separated from the solid waste stream for the purpose of recycling or reuse, prior to receipt at a solid waste operation, facility or recycling center.

This new definition does two things: First it combines the Board's Policy definitions Source Separated with Separated for Reuse. Second, it deletes the ability to utilize the term "Separated for Reuse" as a reference to any material that has already been processed at any operation, facility or center. The definition now clearly defines intent on the part of the owner as the crux of the definition. This is contrary to the interpretation of the definition offered by Board staff at the 10/18/95 P&E Committee meeting in their Agenda Item 10 description:

"The only distinction between the two definitions above relates to the location at which the separation occurs. Source separated recyclables are separated or kept separate from solid waste at the point of generation (i.e. at the source). Recyclables separated for reuse fit into a slightly broader category that recognizes that recyclables may also be separated from waste at a transfer station or a material recovery facility."

At the August 16, 1995, P&E Committee meeting, Denise Delmatier of the Gualco Group on behalf of NORCAL Waste Systems offered testimony regarding the proposed definitions,

"...We have, in particular, been advocating a necessity for the two definitions as opposed to a single definition. And in previous committee hearings and workshops the popular term of art that's utilized in industry is the term Source Separated. And we acknowledge

that and recognize that.

However, as the Board Members well know, we are constrained in fact by statute. And the only term that is utilized for purposes of exclusion outside the regulatory tiers as proposed in the Public Resources Code, is the term Separated for Reuse. And so that's why we think in promoting this package and moving it on to OAL eventually we have to acknowledge that the statute use the term Separated for Reuse.

In looking at the term Separated for Reuse we have consistently advocated at the Board and over the years, that when this term was proposed in statute under AB939 that it was at that time contemplated in the Definition of Exclusion for Transfer and Processing Station, that if you look at the exact language that it utilizes the verb term of past tense. And so that under the exclusion the definition states that these are materials that have already been separated for reuse.

And so for purposes of definition then, we advocate that once materials are separated for reuse we have been, those materials have been processed to the point that they are now ready to enter the marketplace, they are now ready to meet the quality standards to enter the economic mainstream, et cetera.

So we think that then separated for reuse is the more "limiting" term, if you will, and that Source Separated is the "broader" more encompassing term.

And so we actually differ then with staff in their recommendation that Source Separated is -- we actually believe that source separated is the broader term, and Separated for Reuse is the more limited term because of the tie-in to the recycling definition. And we have been, of course, advocating that, we have been consistent with that approach for some time...."

Since Board staff is offering a new definition of "Separated for Reuse", differing from the Board policy definition, it appears that there is still uncertainty regarding the meaning of the phrase. Los Angeles County LEA agrees with the interpretation as presented above by Ms. Delmatier. Separated for Reuse is material that does not require any further processing or sorting and could be produced at a Recycling Center, or MRF or Transfer Station. The Board policy definition of "Separated for Reuse" appears to adequately reflect this interpretation, as long as it is understood that "Source Separated" is the broader term. A more definitive definition might be:

(30) "Separated for Reuse" means materials that have been separated from Source Separated Material or from the solid waste stream for the purpose of reuse.

This proposed definition would require that a definition of "Source Separated" be included. The Board policy definition should be formalized here.

End Note #2:

The basic problem with the 10% Solution is that it won't do what it was intended to do. It's superfluous. Source separated facilities (I'll use this term in the generic sense here and not to be confused with the legal term "facility" as defined in the PRC) produce residuals ranging from 0 to about 25%. There is a very large gap in the amounts of produced residuals between these facilities and the Material Recovery Facilities that process mixed waste. MRF residual production typically ranges from 70 to 90%. Therefore if the intent is simply to identify those facilities that process SSM then it would be a simple matter of drawing the line somewhere between 25% and 70%. Any line drawn lower than 25% would have to be based upon additional criteria independent of the effort to "prove" that a facility accepts SSM. The proof is already there...below 25% is source separated.

Obviously there were other reasons for the placement of the "What's In - What's Out" line at 10%. The solid waste industry wanted the line drawn as low as possible and the recycling industry wanted it drawn as high as possible, for obvious reasons. Unless each and every load arrives at a facility with a manifest guaranteeing the residual content, the ultimate determination of this amount can only be made after the fact. That is, after input material has been processed. I am unaware of any processing facility that keeps records for every load documenting the input tonnage and the output residuals. (The proposed regulations would require this.) Therefore, for whatever residual percentage calculated for a specific facility, the result is an AVERAGE of all the input loads received during the averaging period. The average could be determined over a day or a week or a month. The longer the period the greater the variance from the average that could be attained on any particular day. A simple chart might be of help here:

Week Day	Input Tonnage	Output Tonnage(Residuals)
Monday	20	0.4 (2% Residuals)
Tuesday	20	0.4
Wednesday	20	0.4
Thursday	20	0.4
Friday	20	0.4
Saturday	100	18
Entire Week	200	10%

If the average was calculated for a one week period the facility produced 20 tons of residuals and meets the 10% cap. However, 50% of its activity was devoted to processing waste that was almost twice the percentage cap of 10%.

This type of scenario could also be applied on a DAILY basis. The incentive, I would think, would be to acquire as many inherently low residual loads as possible in order to make up for the inherently dirty loads (curbside?).

End Note #3:

THE TWO PART TEST

The Two Part test started out as a Three Part Test. At the August 16, 1995, P&E Committee meeting Board staff recommended dropping the third part, "Demonstrate Public Health and Safety Nuisance Issue". Quoting from the transcript of that meeting :

Committee Chairman Frazee: Now, there was concern over Item 3. That is out of the recommendation at this time. I think for the reason that, if there is a need for local enforcement agencies to step in, in this area, they have authority under other statutes to do that, and to enforce statute and local ordinances based on health and safety concerns, and things of that nature.

Mr. Okumura: That's correct.

This decision seemed to be based on two things. The first was that putrescibles could not be measured in the waste. The Putrescible fraction of the waste stream was mentioned by most LEAs as their greatest concern. The second was the receipt of a letter by the Board from the California Conference of the Directors of Environmental Health (CCDEH) that stated, according to Doug Okumura at the 8/16/95 meeting,

"...In receiving a letter from the Environmental Health Officers we had kind of a mixed review from them. Some of them felt they needed to have some more local control. Some of them felt that, no, they already had jurisdictions. We received a letter from their association that basically says they don't think it's necessary to be in there. So, what I'd like to do is, under the proposal we'd like to take, under the chart here, Item No. 3, to take Item No. 3 and completely remove that and to change the, the following two-part test. So, with that, our proposal would now drop No. 3, which is the Demonstrate Public Health and Safety Nuisance Issue. We'd like to drop that from our proposal."

This is not a two part test. It has only one part. In order to be two parts there would have to be distinct criteria for each part. In the Board's first part there is no criteria(the elements of the definition, Source Separated, is not applied). However in the 2nd part there is an addition to the definition of Source Separated"Material that contains less than 10% Residuals"...that is the only operative definition of SSM and the only test. There is nothing stated about origin of material...only that it contain less than 10% residuals. If proof of SSM means that it contains less than 10%...then why is that not in the definition of SSM?

End Note #4

(Letter has been retyped from a faxed copy in order to put it into an electronic format)

August 16, 1995

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PERMITTING RECYCLING FACILITIES

The California Conference of Directors of Environmental Health, Solid Waste Policy Committee, whose members are the majority of Local Enforcement Agencies (LEAs), offers the following comments on regulating and permitting recycling facilities. In examining this question, it is readily apparent that there are a number of kinds of facilities which should not be regulated. These reasons include the following:

1. Permitting requirements should not be extended to facilities which have traditionally managed waste products before they have entered the waste stream for disposal. These facilities have functioned successfully for decades under other regulatory environments and do not now need additional intervention.
2. Many recycling operations are such that they have minimal potential for causing pollution or nuisance and have a history which supports the no alternative. Local nuisance and public health laws are in place to address issues associated with these operations.
3. Regulatory oversight should be tied to the level of risk to health and safety and the environment. Evidence is lacking as to public health risk associated with many of solid waste facilities that are contemplated to be regulated by the CIWMB.

The first thing then should be to eliminate these kinds of operations from consideration for regulation oversight. Using the rationale below, items 1, 2, and 3 suggest the operations which may be excluded from regulatory oversight. Items 4, 5, and 6 below outline the kinds of facilities that could be regulated together with suggestions as to the type of permit which may be appropriate.

1. A clear definition of recycling must be established so as to not penalize traditional salvagers. A suggestion would be to define it as relating only to materials which would have been normally discarded to a landfill for disposal prior to AB 939. This would exclude facilities such as scrap yards, rendering plants, or auto dismantlers.
2. All igloos, drop off centers, buy back centers, and the like should be excluded from permitting.
3. All recycling facilities that generate less than 4 tons of residual waste per day by weight as averaged over a calendar week should be excluded, provided the residual are not allowed to accumulated for more than 48 hours.
4. All recycling facilities that generate between 4 and 25 tons of residual waste per day should have to obtain a registration permit.
5. All recycling facilities that generate greater than 25 tons of residual waste should have to obtain a full solid waste permit.
6. Any recycling facility that handles putrescible and recyclable wastes (i.e., food waste) or which produces a putrescible residual likely to create pollution or nuisance should be required to obtain a permit. However, this requirement must carefully exclude manufacturing facilities as opposed to those facilities which only gather, sort, or otherwise handle waste, without transforming it. The type of permit should be established by the LEA, based on factors related to the public health, safety, or environmental problems caused by the particular facility.

It should be pointed out that in leaving facilities, in items 2 and 3 above, out of the regulatory scheme does not prevent local government from imposing their requirements on these operations.

Should you have any questions, please contact me at 805/654-2818, Monday through Thursday; the Division is closed Fridays.

DONALD W, KOEPP, CHAIR
CCDEH Solid Waste Policy Committee

dwk/sam/ccdeh-sw/recycperm

c: Daniel Pennington, CIWMB Chair
Doug Okumura, CIWMB P/E Division
Ben Gale, CCDEH President
Justin Malan, CCDEH Executive Director

CCDEH-SWPC Members

EndNote #5

The following is a summary of some of the comments made by the participants at the October 1995 P&E Committee meeting. Most comments or questions are paraphrased or shortened.

Questions posed by Relis (Many of these questions were not directed to anyone, but were a reiteration of questions that the Board was attempting to answer in their efforts to set the "What's In and What's Out" line and to slot TS, MRFs and Recycling activities.):

1. What constitutes handling of solid waste versus recyclable material at a recycling facility?
2. What is the relationship between residual, particularly putrescible, and potential health and safety impacts?
3. Is there a threshold value that delineates recycling operations with low residual and presumably little threat to health and safetyfrom operations with higher levels and, therefore, representing a greater threat?
4. What authority do LEAs have to determine whether a so-called recycling facility is actually handling solid waste?
5. Do LEAs have authority to determine the incoming material has in fact been source separated as opposed to being solid waste?
6. "...whether we and the LEA would have the full authority to shut down such an operation should we become aware of it?"
7. Could we determine whether it's outside of the criteria, the two-step process that we have set forth?
8. Could we take swift action to cause that facility to come into compliance, to have to go out and get a permit under our tiered permitting system?

Many of the answers by Board staff regarding the LEAs, are derived from an interpretation of the CCDEH letter..which essentially said "Yes, we have the authority...and could address health and safety concerns."

Plus...Elliot Block responded..."If an LEA suspects that there is an operation that is subject to our regulations, they have the ability to go on-site and inspect. If they are barred entry, there are some other procedures they may need to use; but our statute spells out the ability to go and get an inspection warrant to that extent if it's necessary to get an order from the court. They do have that authority to go and look."

Statement by Relis:

For facilities and operations that consider themselves outside, LEAs have authority under local ordinances to inspect facilities suspected of contributing to health and safety problems.

Okumura and Kuhn were reporting on the survey of the Source Separated processing operations that had just been completed by Board staff and how they think the results of the survey affect the proposed policy proposal.

Statements by Okumura:

Visited 41 sites and at every one of those facilities, operations were extremely clean and we did not observe any health and safety issues. Our proposal is not so much of a residual level for health and safety as much as it is that we are using the criteria that source separated is the key element.

(Ed. Comment: These were all source separated facilities...handling curbside, buy back material, etc.)

Very easy to determine if the material was source separated.

Had to develop a level playing field.

Believes the proposal addresses the fluctuating market prices because of the monthly averaging.

Proposal addresses the multiple operations at one site.

Dropped the capnow feel that there is no discrimination against small or large operations. Feel that the proposal draws clear lines between the MRFs and recycling operations.

Statements by Kuhn:

It doesn't have so much to do with source separated as it has to do with what type of waste stream they are dealing with.

Proposes lowering the percentage limit, year by year, in order to stimulate lower residual percentages.

Recommended to drop Recommendation #8....Record Keeping.

Recommendation #8:

“Staff recommend that the Permitting and Enforcement committee direct staff to develop a standardized record keeping procedure that documents the residual percentage of material recovery facilities and all other operations and facilities that fall under the Board’s regulatory tier authority. Staff shall ensure that the record keeping requirements are enforceable and minimize, to the extent feasible, the impact on the regulated operations. Staff shall also develop a standard form with which non-regulated recycling operations can voluntarily report their residual percentage to LEAs and the Board.”

(Ed. Comment: Curious as to why they would recommend the deletion of this Recommendation when the success of the "Bright Line" drawn on a "Level Playing Field" depends upon accurate and standardized record keeping...see Kuhn's discovery #8 below...both #8....a coincidence)

The Kuhn study found:

1. Curbside programs produce 7-17% residuals
2. Many recyclers conduct combinational activities at their site.
3. Recyclers do not separate the residuals based upon type of input.
4. Waste Hauler Recyclers were very cooperative
5. Recyclers were concerned about the legal issues regarding the survey
6. As of 9/18/95 Kuhn reported that there was no data from the survey that would indicate that recyclers should raise the percentage limit.
7. Remarked that it would be very easy to determine if the site accepted SSM compared to a facility that received mixed trash. One just looked.
8. There were no standards for record keeping, although it was relatively easy to determine incoming tonnage.

Paraphrased Comments in italics:

Didn't see things that are characteristically a health and safety concern. If there was a putrescible issue or a residual issue where it did have environmental or health concerns, that there was a local jurisdiction that could handle that.

Statement by Egigian:

Should set the line low in order to encourage cleaner operations which encourages health and safety...the public protection standard we should be striving to achieve.

Statements by Malan:

Three issues he wants to raise.

Supports the two-part test. Local agencies do have ordinances, regulations, and laws they can view with most nuisance issues. It's public health authority as well, which is probably the most important. This covers all aspects, starting from the planning level which deals with the zoning on the operation, all the way through to nuisance, vector control, odor, dust, etc. from that perspective, we do want to reiterate what we said and concur to board decision that we do believe we have local ordinances to deal with that issue.

"....If the residual level is sufficiently low and based on public health concerns, we would concur with the recommendation to remove that cap."

Editorial Comment: The level was not based on public health concerns and it was not set very low.

"...from the LEA perspective it is imperative that some mechanism be put in place even if it requires separate statute, that some type of recordkeeping be available to the LEAs and the Board."

"...There may be situations where the local ordinances clearly aren't adequate to deal with the situation."

(Ed. Comment. The remainder of the discussion between Malan, Relis and Block, is verbatim)

Justin Malan: "Although an LEA can readily go into that facility if there is a complaint for public nuisance, there may not be an opportunity for that LEA to go into a facility if there is a complaint from a competitor or somebody else saying that's a business that shouldn't be operating without a license and they've got more than 15% or 10% residual. Our concern is, whereas we recognize that we don't necessarily want to put those operations in the Waste Board regulatory framework in order to keep them honest, we do believe there should be some mechanism in place where all those operations after a request of the LEA or the Board need to be able to provide records of their input and output to verify that they are in the appropriate regulatory structure or they are legitimately out of the regulatory structure. Without that, the LEAs I do not believe have the authority and have the tools to assist the Board in making the determination if we are regulating the industry properly."

Paul Relis: You have asked that we have some procedure for those operating without a proper permit to bring to the Board's attention. Dow we have any similar process? What is our option here?

Elliot Block: Let me ask a question just to clarify. Are you talking specifically about bringing back before the Board in a public hearing or just refer those items to the Board for further work? The example you gave was that particular matter was referred to staff that worked on bringing it into compliance.

Justin Malan: Whatever works. I think that's the simplest solution. If it is necessary to formally appeal to the Board or bring it to the Board, then I think there should be some mechanism in place if, for example, we could not get a resolution to an issue. Our concern here is that in some circumstances -- and we can't define how frequently this occur -- in some circumstances, we may not have the authority to effect the operator to operate either properly to take care of the public health and environmental concerns r ensure that the operator -- and maybe it's a fringe, maybe it's on 14.9% all the time -- but we've got some other evidence that it is actually operating out of the line, we would like to be able to refer that to the Board. In our estimation, it is the Board that is going to make the determination whether that operation is in or out. The LEAs are not going to 151

make that determination. The LEA may be the front or the agent of the Board to do the inspections and to verify, but I believe that it is the Board's statute and the Board's determination that would determine whether that operation is or out of your regulatory framework.

Ed.Note: With the expansion of the hearing board function, the Board would probably end up hearing scores of appeals regarding this. Block's following remarks would not be true today.

Elliot Block: I think there is a two-part answer to that question. As a practical matter, that's what happens now. If there are questions on any facilities, the Board staff is there to provide technical assistance and back-up to the LEAs in this regard, as well as if something needs a formal setting or it is a Notice and Order the LEA was issuing that was being contested because the number was 14.9% or 15.1%. There are actually formal procedures in statute and regulation now for appeals of terms and conditions.

Paul Relis: So there would be a hearing before the Board?

Elliot Block: If that was necessary, although that's very rare. In fact, I'm not sure it's ever gone all the way.

Justin Malan: Well, we are not suggesting creating anything new. If it's the Board and Counsel's opinion that that mechanism is in place or that there is some mechanism that can be used, we would be tickled pink.

(At this point Malan sat down and another commentor was heard by the Committee)

The following is a verbatim account from the only LEA who spoke at this pivotal meeting. Jim Cermack, representing the Sacramento County LEA summed up very well what was obvious to the regulators of the real world then and has only become more evident today.

From an LEA's standpoint, what we really look for is tools. What tools do we have for an enforcement program? In this particular issue, to me it boils down to we need three things. We need the ability to get into one of these operations and the ability to determine whether it's documented. Here I'm referring to-- and I don't really have an opinion on the numbers of in and out, how much comes in and the percentage--but we do need some way so that's documented. When I read the report, I think it indicated item number 8 which was going to require that there be some kind of standardized recordkeeping. If I heard right, that particular recommendation was being dropped. Did I hear that right? Again, I would say we need documentation which to me means records. If we are being told that you can only have 2% residual, there's got to be some way to document. That means somebody's got to keep some records. They've got to be available to either ourselves or the Board to take a look at.

152 The third issue is--if they are out of compliance, how do we get them to comply? I think that

issue is answered--if they fall under a solid waste facility permit requirement, that's in the code, but if they don't fall under that, where are they going to fall in the scheme of things? If they don't need a solid waste facilities permit and they are allowed to operate, they could be in violation of basic nuisance type things. We talked about "do the locals have laws and regulations that can regulate this?" "The ones that I'm familiar with are real general. What is a nuisance? Is it a public nuisance? Is it a private nuisance? It's very difficult to answer that question. If there are odor problems, how bad are the odor problems? There's really not any standards for that. The other thing we see from the local standpoint is our legal people are very reluctant to process these types of violations because, I guess like everybody else, they have lots more work than they have manpower. It's generally said that nuisance things are low priority. There are some regulations that can be processed that way but it's very difficult. These are the types of things that create some of the biggest headaches for the LEAs because you have citizens that are out there close to these facilities, they complain, and these are the things that get to the Board of Supervisors and create quite a few problems.

The other thing that I would like to mention, and it would probably be more a concern when you place these in these tiers, I think you have to look at these operations. How much different are they from transfer stations or material recovery facilities? You could have the violation of litter, you can have odor problems, you can have nuisance, you can have storage-type problems. I think that should be taken under consideration.

I was just trying to give you a perspective from where the LEA comes on this.

ANSWERING SOME BASIC QUESTIONS ABOUT THE ALTERNATIVE PLAN

There are two basic problems with the proposed regulations. Rectifying these two problems would go a long way in addressing the almost-too-numerous-to-mention, detailed concerns that this LEA has observed in the proposed regulations.

1. The foundation of the regulations, the 10% demarcation line of What's In and What's Out, is based on a compromise between the recycling and the solid waste industry. The foundation is then applied to the real world, and not surprisingly, fails.
2. Solid waste activities or functions, such as Material Recovery Facilities(MRF), Transfer Stations(TS) and Source Separated Material Processors (SSMP) are treated as distinct entities, deserving of individual tier placement. The current world of solid waste processing or "proto-recycled material recovery" exhibits a trend in the opposite direction. Efforts to artificially separate these functions into unique facilities will only decrease the ability to reach the 50% diversion goal.

There are many possible corollaries and/or derivations regarding the above; one being that #1 begat #2 (certainly made #2 possible).

At the October 1995 P&E Committee Meeting , Board staff prepared a list of questions and answers regarding the concerns of the proposed policy. This list became an attachment to the Agenda Item #10 package.

Below, we've repeated those questions and responses. Following each question and answer, LA County offers its interpretation on how that question might be answered today (**Current Perception**), considering the proposed regulations as the implementing tool of the Board's policy, and then a statement as to how the question might be answered if the proposed regulations were based upon the **Alternative Plan**.

1. Does the proposal address environmental and health safety concerns?

Yes. Source Separated Incoming Materials => Minimal H&S concerns
Environmental Health Concerns will be dealt with at the local level

Current Perception:

Only to the extent that approx. 50% of the Source Separated Materials Processors (SSMP) would be regulated. This would be the "Clean Processing Facilities", "MRFs" and the various Transfer Station tiers. CCDEH in their letter of August 16, 1995, and various LEAs expressed their concern that certain Recycling activities could pose a public health threat unless regulated.

Alternative Plan:

All SSMP, MRFs, and Transfer Stations (TSs) would be regulated unless the activities are explicitly or categorically excluded. The Exclusions are based on the degree of concern that the activity might cause a public health problem.

2. Does the proposal negatively impact Diversion and Waste Reduction?

No, if there is adequate time for implementation and business decisions

Current Perception:

Yes, the restrictive tier structure would prohibit, for example, any resource recovery, to any extent, at TSs. Most TSs, either large or small, employ various recycling schemes to remove bulky and/or high value items from the waste stream. There is almost a continuous spectrum in resource recovery activities from a little to a lot at existing TSs. It would seem that most, if not all, would be required to obtain a MRF permit, or forego resource recovery. If the former, then the LEAs would be swamped with processing permit applications, and if the latter, reduced resource recovery.

The desire by an operator to "stay out", may cause them to avoid or reject "dirty" loads, that ultimately, may not find a home, except the landfill.

Alternative Plan:

No, increases the ability of all types of processors to recover resources by adjusting to varying waste streams and markets. It eliminates artificial and counter-productive distinctions that would confine activities to a very narrow spectrum.

It eliminates the "onerous" perception of one type of activity as being superior to another, as all are IN. This would allow the proto-recycled material to "flow" to the most efficient location for processing.

3. Does the proposal establish a level playing field?

Yes, through the adoption of statewide standards for who's IN/OUT

Current Perception:

No, the SSMPs that are judged at 9% residual, for example, would be outside the regulatory framework, while those at 11% would be in. From a Public Health viewpoint, there is no real difference, especially when one considers the types of materials that might comprise the 9% vs. 11% operations (9% may be 100% putrescibles).

Also, the exclusion process appears random and not based on any criteria.

Alternative Plan:

All proto-recycled material processors are initially IN and then they are either placed in an appropriate tier or excluded. These decisions are based on the degree of public health

concern utilizing the criteria of type of material processed and/or the input amounts. Subjectivity and therefore the "tilt" of the "level playing field" is considerably reduced.

4. Does the proposal establish clear and enforceable standards?

Yes, Source Separation is the key standard

Residual Percentage is the indicator of source separation

Current Perception:

The current proposed regulations are unenforceable due to:

a. No requirement for standardized record keeping

Equitable regulation depends upon accurate, extensive and standardized record keeping; None of which are required in the Proposed regulations. In fact a proposed requirement to require Records was dropped by the Board in Oct. of 1995. Those operators that do keep extensive records might be "penalized" by virtue of being considered "in" and those who don't might be left untouched because their status would always be in doubt.

b. No easy means to gain entrance to the facility for non-health concerns

Operations which are outside the regulatory framework cannot be easily accessed in any situation, health related or otherwise. Even in potential health threatening situations and without the cooperation of the operator of a facility, an inspection warrant would have to be obtained from a judge. The judge requires that some "proof" be offered of the threat before issuing the warrant. It is difficult to imagine a judge issuing a warrant based upon a complaint from a competitor that the 10% residual limitation was being violated. If one did gain entrance, then the problems outlined in (a) above would be encountered.

c. No means to easily monitor amounts of residuals

Residuals are what the operator says they are unless a manifest system is used to track them and the recyclables from cradle to grave. Marginal recyclables could be maintained for long periods of time at the facility before ultimate disposition, either causing health problems or finally being disposed at a landfill. Of course when there are no standardized records, this not only makes it very difficult for the enforcement agency but eliminates the concept of the level playing field.

d. Will promote dishonesty

The problems mentioned above only address the operators who would honestly report whatever was required. The problems become much more evident when the

dishonest operator or sham operation is considered. Recent experience with the sham Mulchers or Vermicomposters should alert the Board to the difficulties in "regulating" the "non-regulated". The LEAs expressed their concern to the Board prior to the adoption of the regulations that excluded the aforementioned activities. It is hoped that experience won't be repeated. The following is an example of a sham "recycling operation" that would be excluded under the proposed regulations:

An operator states he (I use the generic he) produces less than 10% residuals. He also states that he is "temporarily" storing large quantities of "recyclables" on another property until the market improves. What to do? Require a manifest system that would track the stored recyclables in order to ensure their proper usage? How would this fit in to the monthly residual accounting figures? Believe him? Wait the months or perhaps years before the ultimate fate of the stored recyclables is known?

The above example demonstrates that the LEA would have to make a subjective decision based on stated intent. LEAs, as with most regulators, are unconcerned with stated intent and are only concerned with concrete results. In order to properly regulate or judge the adequacy of anything there has to be a material affect against which the regulator can compare the appropriate standard. Talk is cheap in the general world and has even less value in the regulated world.

e. Residuals may vary over time

The averaging period of one month allows the operator to process relatively high dirty loads at any one time. All of the public health concerns regarding such material, its handling, storage, etc. will be present without any oversight.

e. No provision to prove the material is a SSM in the first place

The "proof" that the material is SSM by virtue of a 10% residual averaged over a month does not prove that the material is in fact Source Separated. There is no provision that the recipient guarantee in some way that the material originated from a SSM location. As noted in (e) above, the material for a time, could originate from anywhere.

f. The 10% line is drawn at the median point of Source Separated processors

There couldn't have been a worse place, from a regulatory standpoint, to draw the line than at 10%. The line is drawn in the midst of the largest grouping of

SSMPs. Trying to sort out the "INs and OUTs" of this group, whose status may vary over time, will create a bureaucratic nightmare for the LEA. This will also create unending complaints directed to the LEAs from competitors, the public interest groups who are against the facilities, politicians who side with either of the two aforementioned groups and from the general public who experience nuisances from the facilities.

g. The non-regulated sites will be required to monitor themselves, without standardization, without reporting requirements and without oversight.

To expect that all operators will follow whatever standards are set on their own, without oversight is foolhardy, unless we have such a minimal concern for whatever regulations apply that it wouldn't matter to us if the operator complied with them or not. If this is the case, why have the regulations in the first place? This is a general criticism regarding any regulation that applies to the "Excluded Tier". Put those types of operations or facilities in the Excluded Tier where it is readily apparent that they belong there and don't rely on some self-regulating formula that can't be checked.

h. Public Complaints should not be a replacement for regulatory oversight

The LEAs and the operators need to know the status of a standard or limit before it happens, not after. An analogy: The operator of a landfill is not regulated or inspected...there is no control over the types or quantities of materials accepted. Once a year a ground water sample is taken off-site to determine if the ground water is being impacted by the site. The only way any regulator can "intervene" in the operation of this site is if there is a public complaint or other evidence is brought forth that would indicate that the operator is operating outside a self-regulating format. (Such as an Excluded Tier). The yearly sample indicates that the water is being polluted. Require the operator to get a Permit? If there had been a concern that something might occur then a procedure should have been in place to prevent that occurrence....such as all the statutes and regulations that currently regulate landfills. What is the value of a "public complaint" as an indicator of the status of public health and safety and the environment, in this situation? In the preceding example, when will this value demonstrate itself? When a resident's water starts to taste bad? Why have any preventive program in place at all...regarding anything....if one is going to depend upon the public's perception of a problem? Usually by the time the public has "perceived" the problem, damage has already been done, and/or mitigation would be much more difficult and expensive to effect.

Alternative Plan:

As everyone is in, except those that are clearly excluded, all facilities and operations are overseen by the LEA. Records are standardized and will be routinely checked. The criteria is objective...amounts of materials measured in tons and the source of the material. The Source of the material can also be objectively checked and does not require an indirect, inaccurate and subjective method to make the determination. Each incoming load that the operator would want to declare as SSM would be listed as to origin. Curbside programs throughout the state are certified and other sources could be checked on occasion. It would be difficult to accept large quantities of MSW without it being readily apparent.

Intent of use of recyclables or disposition of the residuals is not a concern to the LEA. from a tiering perspective. The LEA does not have to rely on third parties to do its job. will not be engaged in "bean counting" and its chase of "phantom" complaints will be reduced...in effect it will be more efficient and its unrecovered cost (lost in unregulated activities and in some jurisdictions made up in part by the regulated community or from the general fund) will be minimal.

The Alternative Plan proposes that all SSMPs, MRFs and TSs be regulated by the same set of Minimum Standards. Each standard would address a specific concern that could occur at any of the facilities. Also, only one set of definitions would apply and would be located in the general definition section of the CCR that applies to all solid waste activities over which the Board has authority.

5. Does the proposal substantially expand the regulator oversight of the Board?

No, the proposal clarifies who will be regulated as a MRF

Current Perception:

Yes, many SSMPs are not regulated now. Using the data from the Board staff survey of 1995 indicates that up to 50% of them would end up as IN. The proposed Registration Tier of "Clean Processing" is still a MRF and using the 10% demarcation line "proves" that the material arriving at the facility is trash...not Source Separated Material. That also means that the facility processes trash and all the collectors, transporters and haulers who supply the "Clean Processing" Facility are waste haulers.

Alternative Plan:

Yes, would essentially double the predicted total. However, their inclusion in the regulatory framework is based on concerns regarding public health and safety and the environment. The Board over the past several years has expanded its authority over Non-Traditional Activities based on the same concerns; such as Composting, Non-Hazardous Petroleum Contaminated Soil, Used Tires, Ash and most recently Mulching and

Grinding.

6. Does the proposal have an immediate and negative impact on existing recycling facilities?

No, minimal impact due to phase-in of requirements

Current Perception:

The one year grace period would probably be adequate for almost any existing facility.

Alternative Plan:

The one year grace period, as exists in the proposed regulations, would be adequate.

7. Does the proposal address the "unexpected" or unusual facility operations?

Yes, through the exception procedure

Current Perception:

No, the proposed regulations create a constricted operational environment for an evolving field.

Alternative Plan:

Yes, not only is there substantial lee-way within the tiers to carry out varied functions, but up-tiering would be a relatively easy exercise except for the Full Permit. However, even here a SSMP that might receive over 1000 TPD would in all probability have been or would be required to obtain a CUP along with the completion of the CEQA requirement. LEAs have stated for years that it is the effort to obtain the CUP where "Permit Streamlining" breaks down, not at the Solid Waste Facilities Permit stage.

8. Does the proposal require development of an "interim enforcement policy"?

No, due to phase-in period

Current Perception:

No, allows an operator one year to obtain whatever is required.

Alternative Plan:

The Alternative Plan does not address interim strategies. However, we would suggest that all proto-recycled material processors, except categorically excluded operations, submit a Notification to the LEA within 30 days after the effective date of the regulations. The LEA then can determine what the next step might be, e.g. letter to operator to submit Registration Information, letter to operator that the operation is Excluded, letter to operator to submit an Application for a Full Permit, etc.

As they are all IN, this gives the LEAs the authority to require information...otherwise, legally, they cannot.

9. Does the proposal consider enforcement of "new Facilities"?

Yes, there will be a phase-in period for new recycling facilities

Current Perception:

Allows existing facilities to meet the requirements within one year. The assumption is that new facilities would be required to meet the requirements immediately.

Alternative Plan:

New facilities would be treated like any facility. A one year grace period seems appropriate for existing facilities.

10. Does the proposal negatively impact "marginal recyclables"?

No, staff anticipate minimal impact if we start at 15%, but huge impact if we start at 5%.

Current Perception:

Yes, if one considers the middle ground between 15% as minimal and 5% as huge. As mentioned above, marginal recyclables that may have been removed from a TS or marginal recyclable loads received at a SSMP, may not be processed due to the concern of violating the tier parameters.

Alternative Plan:

One of the Alternative Plan's greatest strengths is its ability to respond to variations from the norm. Facilities can act as TSs, MRFs, or SSMPs and still remain with a tier. Marginal recyclables will become a larger issue as the pressure to divert 50% increases. What may be "useful" today, may not be tomorrow...and thus a recyclable becomes a residual or just the opposite. The Alternative Plan only considers what comes in the front door and is unconcerned with the label attached to any material after that.

11. Does the proposal increase the regulatory burden on recycling operations?

Not at all if they are OUT, Yes if they are IN

Current Perception:

No change here.

Alternative Plan:

Yes, SSMPs would now all be IN, except for the exclusions. However, except for the very largest SSMPs (over a 1000 tons a day of SSM) the permit burden is minimal. Even the effort to obtain a SWFP, as mentioned previously, may also be minimal due to the effort required to obtain a CUP.

One of the Board's mandates is to protect public health and safety and the environment. These should not be considered just theoretical concerns. Actual situations of public health concern now exist that relate to activities, now outside the Board's explicit purview, that may come under their authority in any scenario. LEAs or public health departments have responded to complaints regarding flies, odors, litter, mosquitoes, rats, etc. that originate in the types of operations that might be excluded under the proposed regulations. The LEAs can and have issued general sanitation clean up orders but this only addresses the symptom, not the cause. General sanitation ordinances were written to address the general situation and to address a problem before it becomes wide-spread. They were not written to prevent a problem in specific cases. Specific case ordinances are written to prevent problems, such as the solid waste sections of the CCR. When CCDEH wrote its letter to the Board on August 16, 1995, its main emphasis was to point out that certain small activities could be addressed by the LEAs or local health authorities but it stressed the fact that large activities, such as MRFs and SSMPs (anything over 4 tons of residual a day... Justin Malan, representing CCDEH at the October 1995 P&E Committee meeting suggested dropping the cap due to the fact that it discriminated against large operations...the Alternative Plan essentially eliminates this concern) required state oversight. Without this oversight, problems do not just go away, and the individual jurisdictions, will be compelled to promulgate their own local ordinances, similar to the situations that are current in the state regarding mulching, composting, ash disposal, biosolids utilization and the like. The Alternative Plan fills this incipient vacuum and again levels the playing field.

12. Does the proposal address the fluctuating market prices of recyclables?

Yes, through phase-in process, and through monthly averaging of the residual percentage number

Current Perception:

First...there is no phase in process, only a one year grace period. Second...Market prices usually do not fluctuate on a monthly basis. Their periods are much longer than this. The monthly averaging may make up for small fluctuations, but over the long haul the change in market prices will affect the "recyclability" of certain materials that the processor may hold onto in order to see what happens. Eventually, the cost of storage may prove too high or the market prospects may not look bright, in those cases, the material is destined for the dump. As noted above, in order to properly "regulate" any specific tier, the LEA would have to be aware of the ultimate disposition of all incoming material.

Alternative Plan:

The Alternative Plan is unconcerned with ultimate disposition of material. It is only concerned with the material that comes in the front door. Market prices have no affect whatsoever.

13. Does the proposal address the issue of multiple operations at one site?

Yes, by allowing a little "headroom" in the residual percentage

Current Perception:

The headroom bangs hard at 10%. Operations that may fluctuate, in terms of residuals (see #12 above), over a period of months, could conceivably go up and down around the 10% median line. The 1995 Board staff survey indicated that curbside residuals varied between 7% and 17%. What happens when some of those recyclable materials in the 7% operation no longer have value? How does an LEA keep track of all this? Especially when the facility may start outside of the regulatory framework.

Alternative Plan:

The Alternative Plan does not consider residual, except as 10% of incoming SSM. A facility could be a Buy-Back, Drop-Off and SSMP(that receives less than 40 tons a day from sources OUTSIDE its Buy-Back operation - we don't expect they'll pay much for trash- everything received at the Buy-Back is exempt) and still not be required to file a Notification to the LEA, they're EXCLUDED.

A larger facility could act as a MRF, SSMP, or TS all on the same day if they wanted to. If a Notification Tier operation wanted to expand, they would just comply with the Registration Permit requirements and they're in. Also, the TS could also have a Buy-Back and/or Drop-Off, that would not affect its standing in the tiered structure.

14. Does the proposal unnecessarily increase the administrative burden on the LEA or the Board?

No. New administrative burdens are kept to a minimum

Current Perception:

Yes, please see all of the above for the current perception of this question.

Alternative Plan:

No, the additional operations/facilities would be handled like any other site. Fees would be assessed commensurate with the level of oversight/inspectional frequency. Currently, Registration Tiered facilities are required to be inspected once a month and Notification Tiers, quarterly.

15. Does the proposal help to promote permit streamlining?

Yes.

Current Perception:

No, the effort needed to track the activities of non-regulated operations will be almost totally non-productive. Efforts may be made, but the almost total lack of regulatory tools will doom most investigations. However, if a decision is made to require a permit at a SSMP facility (and especially if the residual is close to 10%), the operator will in all

probability appeal the decision to the hearing panel. Given the realities of the function of that group, any decision will in turn be appealed on to the Board. The Board can expect numerous hearings to decide the proper slotting of SSMPs. This is contrary to that expressed by Board Counsel Elliott Block at the October 1995 P&E Committee meeting when he stated in response to a question if there would be a hearing before the Board to decide if an operation needed a permit or not, "If that was necessary, although that's very rare. In fact, I'm not sure it's ever gone all the way." Times change and it has gone "all the way", and would sure to be repeated numerous times if the current regulations are approved in their current format.

Alternative Plan:

Decisions regarding the placement in the Tiered structure will be objective and not time consuming. The fact that only the very largest SSMPs would qualify for a Full Permit, indicates that overall, approvals, if needed at all, will be relatively swift. This doesn't mean that decisions would not be appealed to the Board, but the fact that the decision is based on "harder" evidence would suggest that the frequency would be much less than suggested above.

16. Does the proposal discriminate against small or large operations?

No, due to the removal of the cap

Current Perception:

Yes, a small operation that produced, as an example, 3.1 tons of residuals, with 30 tons input would be in and one with 600 tons input with 50 tons of residuals would be OUT. What if that 50 tons consisted of mixed trash and the 3.1 tons was just office paper? Small operations with small residuals, regardless of the absolute amounts, could be at a disadvantage.

Alternative Plan:

One of the problems with earlier "Alternative Plans" (such as suggested in the CCDEH letter of August 1995), was that large SSMPs would be "discriminated" against, that is, they would more readily qualify for the IN category than smaller operations, due to the absolute amounts of residuals produced at the facilities.

The Alternative Plan addresses this concern in two ways. First, all SSMPs are in, except if they are Excluded. Second...the placement in the tiers is based on absolute amounts of trash that enter the facility. The greater the amount, the higher the tier, the greater the regulatory oversight; this isn't discrimination, it's simply a way regulatory agencies respond to a concern that stems from their basic mandate; in this case, that is the protection of public health and safety and the environment.

17. Does the proposal draw a clear line between MRFs and Recycling Operations?

Yes, Source Separation is the key

Current Perception:

No, if the only concern was this determination, studies have shown that there is a natural break in the data that leaves no doubt where the differences begin between a MRF and a Recycling Operation. This line should be drawn near 25% residuals, not 10%. Would one actually believe that a facility that produces only 11% residuals, is a MRF?

Alternative Plan:

The Alternative Plan assumes that all SSMP facilities produce between 2% and 20% residuals. This is distinctly different from a MSW processing facility such as a MRF, that produces 70 to 90% residuals. The SSMP type of activity, whose average residual is around 10%, is considered as exhibiting only 10% of the public health concern, based on residual average of the group. The difference between a SSMP and a MRF can be verified by the review of input records. Since the LEA would be involved in some manner at the facility, guess work will be eliminated.